

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
05-10844 MEL

LAURA M. PORTELA,
Plaintiff

)
MAGISTRATE JUDGE

vs.

)
C.A. NO.

WAL-MART STORES, INC.,
Defendant

COMPLAINT AND JURY CLAIM

JURISDICTION

1. The Federal District Court has diversity jurisdiction in this matter pursuant to provisions of 28 U.S.C. §1332(a).

VENUE

2. Venue is proper in the United States District Court for the District of Massachusetts because a substantial part of the events which form the basis of this claim took place in this district and the defendant is subject to personal jurisdiction in this district.

PARTIES and FACTS

3. The plaintiff Laura M. Portela is an individual residing in Aguadilla, Puerto Rico.

4. The defendant Wal-Mart Stores, Inc. is a corporation duly organized and existing under the laws of the State of Arkansas with a principal place of business at 702 S.W. Eighth Street, Bentonville, Arkansas.

5. At all materials times, the defendant corporation owned and/or operated a Wal-Mart department store located at 700 Oak Street in Brockton, Massachusetts.

6. On or about June 2, 2002, the plaintiff was a patron of the defendant's store in Brockton, Massachusetts.

**PLAINTIFF LAURA M. PORTELA'S CLAIMS
AS TO THE DEFENDANT WAL-MART STORES, INC.**

COUNT I - NEGLIGENCE

7. The plaintiff repeats and reavers the foregoing paragraphs as if each were set forth fully herein.

8. At all material times, the defendant owned, controlled and/or maintained the Wal-Mart store premises at 700 Oak Street, Brockton, Massachusetts.

9. The defendant had a duty to maintain its premises in a reasonably safe condition and free of all foreseeable defects and hazards.

10. On or about June 2, 2002, the defendant breached its duty by causing said premises to be in an unsafe condition, and/or by failing to properly warn members of the public who were lawfully on the premises of such unsafe condition.
11. On or about June 2, 2002, the plaintiff was caused to suffer severe personal injuries when she was injured due to a defective condition on the defendant's premises, which defective condition was the result of negligence attributable to the defendant, its agents, servants and/or employees.
12. As a direct and proximate result of the defendant's negligence, the plaintiff was caused to suffer and continues to suffer serious personal injuries including bodily pain and mental anguish, has incurred and will incur medical expenses for her care and attendance, has suffered lost wages and/or a loss of earning capacity, and has suffered an impairment to her ability to enjoy life and attend to her usual activities.
13. The plaintiff was at all times in the exercise of due care and free of all comparative or contributory negligence.
14. The plaintiff's damages in this action exceed the sum of \$75,000.00.
15. The plaintiff has satisfied all conditions precedent to the bringing of this action.

WHEREFORE, the plaintiff demands judgment against the defendant in the amount of her damages, plus interest, costs and attorney's fees.

JURY CLAIM

The plaintiff claims a trial by jury the causes of action as set forth herein.

Respectfully submitted,
By her Attorneys,

KECHES & MALLEN, P.C.


CHARLOTTE E. GLINKA
BBO # 559117
122 Dean Street
Taunton, MA 02780
(508) 822-2000

Complaint

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Laura M. Portela vs. Wal-Mart Stores, Inc.

1. Title of case (name of first party on each side only) _____

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Charlotte E. Glinka, Esquire

Keches & Mallen, P.C.

ADDRESS 122 Dean Street

Taunton, MA 02780

TELEPHONE NO. (508) 822-2000

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS		DEFENDANTS	
<p>Laura M. Portela</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Charlotte E. Glinka, Esq. (508) 822-2000 Keches & Mailen, P.C. 122 Dean Street, Taunton, MA 02780</p>		<p>Wal-Mart Stores, Inc.</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)	
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		PTF DEF Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4	
<input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		Citizen of Another State <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	
		Citizen or Subject of a Foreign Nation <input type="checkbox"/> 3 <input type="checkbox"/> 3	
IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT		TORTS	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		PERSONAL INJURY	
<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury		PERSONAL INJURY	
<input type="checkbox"/> 410 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		PERSONAL PROPERTY	
REAL PROPERTY		CIVIL RIGHTS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	
		FORFEITURE/PENALTY	
		BANKRUPTCY	
		PROPERTY RIGHTS	
		LABOR	
		SOCIAL SECURITY	
		FEDERAL TAX SUITS	
		<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	
		<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
		<input type="checkbox"/> 861 FIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
		OTHER STATUTES	
		<input type="checkbox"/> 460 State Reapportionment <input type="checkbox"/> 480 Antitrust <input type="checkbox"/> 490 Banks and Banking <input type="checkbox"/> 495 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
V. ORIGIN (Place an "X" in One Box Only)		Appeal to District Judge from Magistrate Judgment	
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____		<input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7	
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC Sec. 1332(a)			
VI. CAUSE OF ACTION Brief description of cause: A loss of earning capacity in excess of \$75,000.00 due to def's negligence			
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____	
		CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE		DOCKET NUMBER	
DATE	SIGNATURE OF ATTORNEY OF RECORD		
			
FOR OFFICE USE ONLY			
RECEIPT #	AMOUNT	APPLYING IFF	JUDGE
			MAG. JUDGE